Fill Massachusetts

ACTION TEAM 6/30

URGENT

June 30, 1994

MEMORANDUM TO MESSRS. PEPPLES, WELLS, OECHLER, RILEY, SIMEONIDIS, DONAHUE AND WALL

Attached is a portion of the current Massachusetts budget bill which is likely to be adopted today. Section 276 of the bill warrants careful study. It purports to give the Attorney General the authority to sue tobacco manufacturers to recover Medicaid funds. It makes clear that the right conferred is both a subrogation action and an independent cause of action. It allows consolidation of actions, but says nothing about class actions. It also says nothing about elimination of defenses, market-share liability, or statistical evidence.

Current Massachusetts law, prior to this amendment, allows the state to bring a subrogation action to recover health care costs after a nine-month period from the date of injury, during which the right to seek a recovery is the injured party's alone. The state can hire outside attorneys to litigate the case, though nothing is said about how those attorneys might be paid.

We need to give some advice to our political representatives about what to do next. Governor Weld has line-item veto authority, but our political representatives are skeptical that he would exercise it absent very compelling arguments, which may not be available here. In addition, if Weld vetoed the provision, we can expect our opponents to press in the future for Florida-style legislation, and indeed they may do so anyway. This provision may be preferable to anything that would be passed later, and its effect might not be so dramatic.

Our political people do need quick advice, and to that end I would like to have a conference call today at 4:30 if that can be arranged. Please call my secretary upon receipt of this to let her know whether you can participate.

Keith A. Teel

2047638853

Source: https://www.industrydocuments.ucsf.edu/docs/lhkx0000